IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NOs : 22127 of 2003 and 22520 of 2003

Between:

Praja Chaitanya Seva Sangham rep by its President
Sri G. Chenna Reddy, S/o. G. Sidda Reddy Age : 38 R/o. L.R. Palli Village & Mandal,
Cuddapah Dist.

..... PETITIONER

AND

1 Nizam's Institute of Medical Sciences Rep by its Director, Panjagutta, Hyderabad.
2 Guntur Diocese, A Non-Government Voluntary Organization,
Guntur.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ, Order or Direction of the like nature. Declaring the action of the 1st Respondent in finalizing the Tender for running two shops in the localities of 1st Respondent premises by awarding the contract to the 2nd Respondent as arbitrary, illegal and un-constitutional.

Counsel for the Petitioner:MR.E.AJAY REDDY

Counsel for the Respondent No.1: Advocate General, MR.V.V.PRABHAKARA RAO

Counsel for the Respondent No.2: B. Adinarayana Rao

WRIT PETITION NO : 22520 of 2003

Between:

Physical Economic and Rural Liberation Society (PEARL'S),

A Society registered under the Public Societies Registration Act, having its office at 7-1-1, East Maredpalle, Secunderabad, rep. By its General Secretary-cum-Chief Functionary Smt. Sheetal Naidu, W/o Damodhar Naidu, aged about 55 years.

..... PETITIONER

AND

1. Nizam's Institute of Medical Sciences, represented by its Director, situated at Punjagutta, Hyderabad.

2. Guntur Diocese,

A non-government voluntary Organisation, Guntur.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or order or direction, declaring the action of the first respondent in awarding the contract to the 2nd respondent to

open and run two medical outlets within the premises of the first respondent, pursuant to the tender notification dated 18th September 2003 vide R.C.No. 28/12/2001/ping, as arbitrary, illegal, capricious, unconstitutional and violative of Article-14 of the Constitution of India and consequently direct the first respondent to award the contract in favour of the petitioner society.

Counsel for the Petitioner:MR.A.TULSI RAJ GOKUL

Counsel for the Respondent No.1: MR.V.V.PRABHAKARA RAO

Counsel for the Respondent No.2: Mr. B. Adinarayana Rao

The Court made the following :

ORDER:

Heard the learned counsel appearing for the petitioners and also the learned Advocate General appearing on behalf of the State and Sri B. Adinarayana Rao, learned counsel appearing on behalf of the contesting respondents.

Since the common question is involved in these two matters they are taken up together for disposal.

The Petitioners herein filed these two Writ Petitions inter alia, seeking to assail the impugned action of the first respondent herein in finalizing the tender in respect of two shops in the locality of the first respondent premises, by further negotiations and awarding the same to the second respondent as arbitrary and illegal and un-constitutional.

Few facts which necessitate for disposal of the Writ Petition are that the petitioners have submitted their respective bids in pursuance of the tender notice dated 18.9.2003, issued by the respondent No. 1, which has been published in local newspapers on 20.9.2003, stating that on receipt of tenders in pursuance thereof, the same will be opened on 30.09.2003. However, it appears that after obtaining all the tenders, instead of considering the tenders in the normal course, the first respondent has called the second respondent herein for negotiations and sought to award the work to him. It was further pointed out that neither the petitioners nor other tenderars were called for such negotiations Hence, these two Writ Petitions.

The main ground urged on behalf of the petitioners is that having called for tenders and with its own terms and conditions, the first respondent ought to have proceeded in the normal course by accepting the lowest tender and should not deviate from the procedure by negotiating with the second respondent herein and that too without giving similar such opportunity to the petitioners herein or other individuals who submitted tenders.

The learned Advocate General appearing on behalf of the respondent herein fairly submits that having regard to the nature of the tender and process completed therein, no doubt the procedure as adopted is not correct and necessarily it calls for giving similar such opportunity to all such tenderars.

The learned counsel appearing on behalf of the second respondent submitted that there is absolutely no reason to challenge the action of accepting his offer and further it is his case the petitioners are in fact totally disqualified and do not comply with the terms and conditions and therefore, they have no locus.

Having regard to the submissions made across the bar and on perusal of the material on record, it is seen that there is no dispute with regard to issuance of tender notification calling for tenders in respect of two shops, which are sought to be established within the premises of the first respondent Institution. Having received

the tenders from the petitioners as well as form the second respondent along with others, in the normal course, the first respondent should have accepted the highest tender, but however, called upon the second respondent for fresh negotiations and there is no justification to deny similar such opportunity to the petitioners as well as other persons who have submitted their bids. No reasons are forthcoming as to why the second respondent alone is called upon for the purpose of negotiations and why others including the petitioners are excluded. Therefore, the impugned action is totally bereft of the very tender conditions and the settled principles laid down by this court and the Apex court.

Accordingly, both the Writ Petitions are allowed.

Ka 24.11.2004.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, The Twenty Fourth Day of November Two Thousand and Four.

To

1 Director, Nizam's Institute of Medical Sciences Rep by its Director, Panjagutta, Hyderabad.
2 Guntur Diocese, A Non-Government Voluntary Organization,
Guntur.

3. 2 CCs to Advocate General, High Court Buildings, High Court of A.P. Hyderabd (OUT)

4. 2 CD copies.